

No.

16509 ✓

IN THE

United States Court of Appeals For the Ninth Circuit

Kurtis Kay Kusters,

Appellant,

vs.

United States of America

Appellee.

**Appeal from the District Court for the
District of Alaska, Fourth Division**

APPELLANT'S BRIEF

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STATEMENT OF FACTS

This is an Appeal from a decision and judgment of the Court below, entered January 23, 1959, revoking the suspension of a judgment sentencing the Appellant September 25, 1958, upon a plea of guilty of a charge of forgery. (T. R. p. 5)

An application was made by the United States Attorney upon a petition on the 6th day of January, 1959, which in substance alleged that subsequent to the imposition of a suspended sentence on the Appellant, the said Appellant on the 13th day of November, 1958, was held to answer to a complaint laid before the United States Commissioner, charging the Appellant with the forging of a bill of sale

issued out of a mercantile establishment in Fairbanks and also that a complaint was laid before such Commissioner on November 7, 1958, charging the Appellant with forging and passing a check in the sum of \$18.00. (T. R. 5)

No final disposition has been made of these cases other than that said Appellant was committed to await action of the Grand Jury.

I

THE SUMMARY DISPOSITION OF THE PETITION TO REVOKE THE SUSPENSION DID NOT ACCORD THE APPELLANT A FULL AND COMPLETE HEARING SUCH AS IS CONTEMPLATED BY THE ACT.

The Court below has failed to specifically point out whether in its decision it was guided by the statute providing for revocation of suspended sentences under the Federal Act, or under the Territorial statute.

While counsel conceded that it was not entirely necessary for the Court, in acting upon a revocation of a probationary or suspended sentence, to have a complete adjudication of the offense committed furnishing the basis for such revocation, the authorities, however, hold that the Court must make a full and complete inquiry into the act committed in accordance with the statutes provided. The speculation on the part of the Court below, whether such proceedings was instituted under the Territorial or Federal Act, did not accord Appellant a fair hearing.

The summary disposition of this type of an application violated the rights of the Appellant. (See U. S. vs. Cappleman, 61 Fed Sup 1007 and cases therein cited)

II

THE COURT LACKED JURISDICTION TO ENTERTAIN ANY PHASE OF THE PROCEEDINGS.

The jurisdictional authority of the Court has been challenged by counsel following numerous challenges by other counsel in cases heard before the Alaska Courts since the enactment and the implementation of the Statehood Act. (T. R. p. 7)

In order to save the time of this Court and to expedite this specific proceeding, Appellant will rest on all of the questions raised on the jurisdiction of the Courts in Alaska since the enactment of the Statehood bill.

The Court will undoubtedly take judicial notice of the ascendency of Statehood and the ceasing of the Territorial status of the Government since the President's Proclamation.

Counsel respectfully submits, however, that whether the Court below acted by virtue of the authority of the Territorial statute and construing same as a Court sitting as a Territorial Court, or acted pursuant to the Federal Rules applicable in Alaska, and thus exercised its judicial powers under the Federal statutes, that in either event the Court lacked the jurisdictional functions to entertain the proceedings.

The saving clause in the Statehood Act was not adequate to transform the Court known as a Legislative Court to that of a Constitutional Court and the attempt on the part of the framers of the Alaska Constitution to continue all proceedings unaffected by virtue of Statehood, was inadequate to establish and ordain a court or to vest or deposit power in the existing court. (See Benner et al vs. Porter 50 US p 119; McAllister vs. U. S. 141 US p 174; O'Donoghue vs. U. S. 289 US 516)

CONCLUSION

The question before the Court having been disposed of in a plenary way, without according the Appellant a Hearing contemplated by the statute, and the Court lacking jurisdiction to entertain the proceedings, merits a reversal.

Dated at Fairbanks, Alaska,
April 10, 1959.

Respectfully submitted,

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Fred D. Crane

By Warren Wm. Taylor

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